



NITYA
tax associates

NITYA Legal Precedents

February 2021 | Week 1

February 10, 2021



PART A: WRIT PETITIONS

1. Issuance of Form C for procurement of petroleum products

The department denied benefit under Form C on purchase of notified goods on the ground that respondent could not register itself under the Central Sales Tax Act, 1956 ('CST Act') upon advent of GST. The High Court held that Section 7(2) of the CST Act allows registration irrespective whether the taxpayer is liable to pay tax or not. Accordingly, the Court directed the department to allow downloading of Form C to respondent for commodities qualifying as 'goods' under Section 2(d) of the CST Act.

Aggrieved by the decision of the High Court, the revenue preferred SLP before the Supreme Court. The Court issued Notice to respondent and stayed the operation of judgment of the High Court.

Commissioner of Commercial Taxes v. Ramco Cements, 2021-VIL-14-SC

***NITYA Comments:** There are several rulings of various High Courts rightly extending benefit of Form-C on inter-state purchase of petroleum products meant for generation or distribution of electricity post implementation of GST.*

Union Budget 2021 has proposed to substitute Section 8(3)(b) of the CST Act to bar inter-state purchase of petroleum products under Form-C for generation or distribution of electricity, mining and telecommunication network. This amendment also indicates that Form C benefit was available to taxpayers in prior period.

PART B: ADVANCE RULINGS

1. Classification of supply of chassis with body building service

The Applicant was engaged in trading of buses and chassis of buses. It also provided service of fabrication of bus body on chassis where such activity was outsourced to bus body builder. It usually entered into three types of arrangements.

The Applicant sought advance ruling on taxability under these arrangements. The decision of the Authority of Advance Ruling ('AAR') and our comments are tabulated as under:

Type of arrangement	Ruling	NITYA Comments
Type 1: The Applicant purchases chassis from chassis manufacturer and executes independent contract with bus body builder for mounting bus on chassis. Subsequently, the Applicant supplies built up bus to customer.	The Applicant was essentially supplying complete bus. Accordingly, it shall be treated as supply of bus and classifiable under Heading 8702 and exigible to GST of 28 percent.	
Type 2 - Model A: The Applicant executed two contracts with customer viz. one for sale of chassis and second for mounting / fabrication services. It entered into contract with body builder for mounting services. Further, the Applicant recovers separate consideration for sale of chassis and mounting services from its customer.	The AAR observed that for fabrication services, body builder was using inputs / raw materials on its own account. Therefore, it cannot be termed as a job-work activity. Further, the Applicant is supplying chassis and activity of fabrication is an ancillary activity. Relying upon CBIC Circular No. 34/8/2018-GST dated March 1, 2018 , the AAR held that activity of supplying chassis and mounting body will amount to composite supply where supply of bus-body is principal supply. The AAR held that activity will be classifiable under Heading 8707 and exigible to GST of 28 percent.	<i>The AAR has rightly concluded that such transactions should qualify as composite supply. However, in our view, principal supply will that be of chassis and not of bus body and Heading 8706 should be applicable.</i>
Type 2 - Model B: The Applicant executed two contracts with customer for supply of chassis and fabrication services under 'Bill to Ship to' arrangement. It entered into contract with body builder for mounting services. Post mounting activity, bus body builder sent chassis directly to customer and recovered service charges from the Applicant. The Applicant receives two separate consideration from customers viz. for supply of chassis and mounting services.		

Type-3: The Applicant supplied chassis to customer. For mounting services, customer appoints Applicant as its agent. The Applicant in turn engaged body builder for mounting services. The Applicant recovers separate amount from customer for mounting services and pays the same to body builder.

The AAR observed that the activity undertaken by the Applicant in capacity of agent will squarely be covered under Schedule I of the CGST Act and exigible to GST of 28 percent.

The AAR is incorrect and unclear as to how GST of 28 percent will be applicable on agency transaction.

Sincere Marketing Services, 2021-VIL-121-AAR (HAR)

2. Classification of design, supply, installation, operation and maintenance of energy efficient lighting system as works contract service

The State Government awarded contract to the Applicant for design, supply, installation, operation, maintenance and transfer of energy efficient Greenfield Public Street Lighting System and Centralized Control and Monitoring system. The Applicant was eligible for consideration of 90 percent in form of capital subsidy and 10 percent of total expenditure along with O&M fees as Annuity Fees.

The Applicant sought advance ruling on following:

Issue 1: Whether supply of installation, operation and maintenance classified as supply of works contract service?

The AAR observed that majority part of contract was for supply of goods where supply of goods constituted 98 percent of entire consideration for contract. Further, services of installation, operation and maintenance cannot be provided and both goods and services were being supplied in a combination. Thus, the activity squarely falls under the definition of 'Composite supply' where supply of goods was principal supply.

Issue 2: Whether capital subsidy received by the Applicant shall be included in transaction value for levy of GST?

The AAR observed that 90 percent of total capital expenditure incurred in supplying, installing and commissioning of equipment was allowed as capital subsidy. Further, subsidy usually is given in form of grant or is benefits to remove certain burden. In this case, capital subsidy does not meet any of the criteria to be called as such. In fact, capital subsidy as stated in the instant case shall be termed as consideration and merits inclusion in transaction value for discharging GST.

Nexustar Lighting Project, 2021-VIL-127-AAR (ODISHA) and Surya Roshni LED Lighting Projects, 2021-VIL-128-AAR (ODISHA)

NITYA Comments: *The ruling appears to be incorrect as definition of 'works contract' under Section 2(119) of CGST Act does not specify any threshold for value of services. In this case, contract was for installation of street lights involving transfer of property in goods and installation services. Further, there is sufficient degree of permanence in street lights when embedded to earth. Thus, entire contract qualified as works contract.*

Further, Section 15(2)(e) expressly excludes subsidy received from Central and State Government from the transaction value for discharging GST. While terms of capital subsidy are not clear in the present case, any subsidy granted by Central or State Government does not merit inclusion in transaction value.

.....

Disclaimer:

This Insight has been prepared for clients and firm's personnel only. It is solely for the purpose of general information and does not represent any opinion of NITYA Tax Associates. We are not responsible for the loss arising to any person for acting or refraining from acting on the basis of material contained in this Insight. It is recommended that professional advice be sought based on specific facts and circumstances.

© NITYA Tax Associates. All Rights Reserved.



CALL US

+91 11 4109 1200
+91 11 4109 1201



MAIL US

updates@nityatax.com
info@nityatax.com
www.nityatax.com



REACH US

NITYA Tax Associates
B-3/58, Third Floor,
Safdarjung Enclave,
New Delhi-110 029.

